Supreme Court, U.S.
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No.

IN THE
Supreme Court of the United States

EYRLE S. HILTON

Petitioner

v.

VILLAGE OF WHEELING, et.al.

Respondents

ON PETITION FOR WRIT OF CERTIORIARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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30pp

QUESTION PRESENTED FOR REVIEW

Does the Seventh Circuit's holding in this case that proof of subjective ill will is necessary to sustain a "class of one" equal protection claim, conflict with this Court's opinion in *Village of Willowbrook v. Olech*, ___ U.S. ___, 120 S. Ct. 1073 (2000) (per curiam).

LIST OF ALL PARTIES

EYRLE STUART HILTON, IV

Petitioner and Plaintiff/Appellant below

VILLAGE OF WHEELING, JOHN PAPADOWSKI, CHIEF OF POLICE OF THE VILLAGE OF WHEELING AND OFFICERS MATHEW JAHNKE, JOHN TEVENS, JEREMY HOFFMAN, ERIC LARSON, JOSEPH LICARI, VICTOR CHIRIO, JAMES PLOVANICH, MICHAEL BURNS, KEN SHEFFLER, JOSEPH DAWSON, LARRY CARMODY AND JOHN BONK OR THE POLICE DEPARTMENT OF THE VILLAGE OF WHEELING AND SOCIAL WORKERS ANGELA BURRELL AND SUE BLEECHSCHMITT.

Respondents and Defendants/ Appellants below

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Order of the United States District Court
(August 12, 1999)

(The opinion of the District Court entering summary judgment for Defendants appears as Appendix A herein.)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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209 F. 3d 1005 (7th Cir. 2000):

(The opinion by the Seventh Circuit Court of Appeals affirming the District Court's opinion and judgment appears as Appendix B herein.)

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) on the grounds that the United States Court of Appeals for the Seventh Circuit has decided a federal question in a way that conflicts with applicable decisions of this Court.

The final judgment of the United States Court of Appeals for the Seventh Circuit was entered on April 20, 2000.

This petition for certiorari is filed within the extension period granted by Justice Stevens in this matter, and the further extension for corrections to the brief.

CONSTITUTIONAL PROVISIONS

CONSTITUTION OF THE UNITED STATES

FOURTEENTH AMENDMENT

Section 1 of the Fourteenth Amendment to the Constitution of the United Stated provides in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case involves a claim by Petitioner, Eyrle S. Hilton, that he has been discriminated against by municipal officials in violation of the Equal Protection Clause.

Specifically, Petitioner claimed below, and the United States Court of Appeals accepted as true, the fact that officers of the Wheeling, Illinois police "enforced the law one-sidedly." *Hilton v. City of Wheeling*, 209 F.3d 1005, 1006 (7th Cir. 2000). The record in the case consists almost entirely of police documentation of complaints made by Petitioner and his neighbors about each other. The record reveals, as the Seventh Circuit explained, that Petitioner was arrested or cited some fifteen times for minor and petty offences in response to his neighbors complaints, but that Petitioner's neighbors were not arrested or cited for the same or similar conduct complained of by Petitioner (with one very minor exception). 209 F.3d at 1006.

The District Court entered Summary Judgment for the municipal Defendants, focusing primarily on Petitioner's claim that the officers' conduct had violated his right to petition the government for redress of grievances.

The Seventh Circuit affirmed. *Hilton, supra.* It found that Petitioner's right to petition the government for redress of grievances did not encompass a claim to police protection. 209 F.3d at 1006-7. The Court also held that Petitioner had not established an Equal Protection violation. 209 F.3d at 1007-8. The Court reasoned that although Petitioner's case seemed to fit the contours of the "*Olech*"- type "class of one" equal protection claim (as defined by this Court in *Village of Willowbrook v.*

Olech, __ U.S. __, 120 S.Ct. 1073 (2000) (per curiam)), Petitioner had not shown the requisite "subjective ill-will," under the Seventh Circuit's original decision in *Olech*. (*Olech v. Village of Willowbrook*, 160 F.3d 386 (7th Cir. 1999)). It therefore refused to reverse the District Court's entry of Summary Judgment for Defendants.

Petitioner seeks a writ of certiorari, contending that the Seventh Circuit's ruling fails to adhere to this Court's *Olech* opinion.

ARGUMENTS FOR GRANTING THE WRIT

It is a fundamental proposition of law that the decisions of this Court must be obeyed by all lower federal courts until and unless they are modified or overruled. *Hutto v. Davis*, 454 U.S. 370, 375 (1982). In this case, the Court of Appeals for the Seventh Circuit appears to have departed from the holding of this Court in *Village of Willowbrook v. Olech*, __ U.S. __, 120 S.Ct. 1073 (2000) (per curiam) by insisting that "subjective ill-will" remains a part of the "class of one" Equal protection analysis despite this Court's holding that subjective motivation is not essential to such a claim. Accordingly, Petitioner submits that a writ of certiorari is appropriate and necessary in this case.

The Seventh Circuit began its "class of one" Equal Protection jurisprudence with *Esmail v. Macrane*, 53 F.3d 1765 (7th Cir, 1995). In *Esmail, supra,* a liquor license applicant complained that he was being denied a liquor license by municipal officials on the basis of trivial infractions of the local code for which no other liquor license applicant had been denied a license. The petitioner in *Esmail* was not a member of a class of persons historically vulnerable to discrimination. Nor was a fundamental right implicated. However, the Seventh Circuit held that the Equal Protection Clause provides a remedy where a citizen, despite his lack of membership in a suspect class, is singled out for vindictive treatment by municipal officials. *Esmail, supra,* 53 F.3d at 178.

Esmail was followed in the Seventh Circuit by *Olech v. Village of Willowbrook*, 160 F.3d 386 (7th Cir. 1999). In that case, the Olechs, white citizens of Willowbrook, Illinois, asked Village officials to connect their property to the municipal water supply. The Village at first required a 33 foot easement from the Olechs while

requiring only a 15 foot easement from other property owners seeking access to the municipal supply. After substantial delay, the Village eventually agreed to connect the Olechs if they would grant 15 foot easement to the Village. *Olech, supra,* 160 F.3d 386-87. The Olechs sued, claiming that the Village's refusal to grant them access without the larger easement was because they had previously successfully sued the city on another matter. Id.

The Seventh Circuit, relying on *Esmail, supra*, again held that the Equal Protection Clause provides a remedy where citizens are treated vindictively by municipal officials. Specifically, the Court reasoned that an Equal Protection "class of one" claim requires "...proof that the cause of the differential treatment of which the plaintiff complains was a totally illegitimate animus toward the plaintiff by the defendant." 160 F.3d at 388.

This Court affirmed. *Village of Willowbrook v. Olech,* __ U.S. __, 120 S.Ct. 1073 (2000). However, this Court specifically avoided relying on the Seventh Circuit's "subjective motivation" test. Rather, this Court held that "...quite apart from the Village's subjective motivation," the allegation that the plaintiff "has been intentionally treated differently from others similarly situated and that there is no rational basis for the differential treatment..." is sufficient to state a claim under the Equal Protection Clause. __ U.S. __ at ___, 120 S.Ct. at 1075.

Clearly, the teaching of this Court in *Olech, supra,* is that "subjective ill will" is not an essential element of a "class of one" Equal Protection claim. As long as plaintiff pleads and proves that she has been the subject of intentional discrimination for which there is no rational basis, the Equal Protection claim should succeed. And that was what was pleaded and proved in the case *sub-*

judice. Yet, the Seventh Circuit insisted on measuring Petitioner's Equal Protection claim by the degree of proof of "subjective motivation."

The Seventh Circuit was forced to conclude, as any reasonable observer of the record in this case would have to conclude, that the municipal police officers "enforced the law onesidedly." *Hilton v. City of Wheeling,* 209 F.3d at 1006. There was no rational basis for this admitted differential in treatment. Petitioner was arrested or cited fifteen times on his neighbors complaints over seven years. *Id.* Yet the police never took Petitioner's virtually identical complaints about his neighbors seriously enough to do anything about them. *Id.* In short, Defendants' actions constituted an arbitrary, unexplained, and intentional withdrawal of police protection from Petitioner. These facts, if not sufficient to permit summary judgment in Petitioner's favor, should have been sufficient to prevent summary judgment in Defendants' favor. Surely there was a genuine issue of material fact as to the existence of an unexplained and apparently irrational difference in treatment.

Petitioner submits that the Seventh Circuit failed to respect this Court's *Olech* opinion. Despite this Court's holding that intentional and irrational discrimination is sufficient and that subjective motivation is not an essential part of the "class of one" Equal Protection calculus, the Court of Appeals insisted on proof of ill will.

Oddly, the Seventh Circuit observed that "[t]he role of motive is left unclear by the Supreme Court's decision." 209 F.3d at 1008. The Court of Appeals acknowledged that this Court had stated in *Olech* that in light of the sufficiency of the allegation that an intentional and irrational difference in treatment had occurred, it was not reaching the " 'alternative theory of 'subjective

ill will'." But the Seventh Circuit went on to hold that it would continue to make proof of ill will mandatory in class of one Equal Protection cases. It emphatically reasserted that:

> ...we gloss "no rational basis" in the unusual setting of "class of one" equal protection cases to mean that to make out a prima facie case the plaintiff must present evidence that the defendant deliberately sought to deprive him of the laws for reasons of a personal nature unrelated to the duties of the defendants' position.

209 F.3d at 1008

The Court of Appeals observed that it would require such proof because

> [i]f a merely unexplained difference in police treatment of similar complaints made by different people established a prima facie case of denial of equal protection of the laws, the federal courts would be drawn deep into the enforcement of petty state and local laws

Id.

In other words, the Seventh Circuit held that it was keeping the "proof of ill will" requirement because this Court could not have meant what it said in its *Olech* decision: To wit, that where there has been an intentional and irrational discrimination, subjective motivation is not a necessary element of proof to establish an Equal Protection violation.

This Court's opinion in *Olech,* decided just this term, addressed for the first time an important aspect of the Equal Protection Clause – can there be an Equal Protection violation in the absence of affiliation with a disfavored "group"? Or, put another way, does the EqualProtection Clause cover a "class of one"? This Court

found the issue important enough to affirm the Seventh Circuit and say "yes." It said "yes," however, by specifically eschewing the "subjective ill will" rationale employed by the Court of Appeals. In this case, the Court of Appeals acknowledged this Court's holding in *Olech*, but nonetheless insisted on keeping the subjective motivation test. It is certainly the rare case that will meet the requirements of Supreme Court Rule 10 (c), but this case appears to be one of them. The Seventh Circuit has more or less deliberately ignored a holding of this Court on an important question of constitutional law. Its ruling, therefore, should be reviewed.

Conclusion

For all the foregoing reasons, Petitioner urges this Court to issue a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully Submitted

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November __, 2000

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EYRLE STUART HILTON, IV	)	
	)	
Plaintiff,	)	
	)	
v.	)	99 C 860
	)	
	)	
VILLAGE OF WHEELING, et al.	)	
	)	
Defendants	)	

MEMORANDUM OPINION AND ORDER

CHARLES P. KOCORAS, District Judge:

This matter comes before the court on defendants' motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. For the reasons set forth below, we grant defendants' motion.

BACKGROUND

Eyrle Stuart Hilton, IV ("Hilton"), brought this action against the City of Wheeling (more correctly, the "Village"), the Chief of Police of Wheeling, and various police officers (collectively "defendants"), alleging that the Village violated the Equal Protection Clause of the Constitution when it ignored legitimate complaints of plaintiff and encouraged his neighbors to make petty complaints against plaintiff. Defendants now moves for summary judgment, claiming that plaintiff's suit is without merit. We set forth below the relevant background facts.

After filing suit pro se, Hilton has retained counsel to defend the summary judgment motion. This federal suit involves an ongoing dispute between Hilton and his neighbors. Village police have been dispatched to Hilton's neighborhood on dozens of occasions. Hilton complains that he has been treated unfairly by Village police, who always took his neighbor's side in the disputes. Hilton has been arrested on numerous occasions based on his neighbor's complaints, while the police never arrested his neighbors on his complaints.

This dispute apparently began in June 1993, when police received 16 calls within the span of one minute reporting a man beating his dog with a baseball bat. When the police arrived, approximately twenty people were on the lawn and street area in front of Hilton's residence. They related to the officers that Hilton had chained his 6-month-old puppy to a pillar in front of his house and beat the dog for five minutes straight. When confronted by the police with the neighbors' accusations, Hilton, whose arm and wrist were in a cast, replied that he was hitting his dog because it has chewed on his couch. Hilton further related that the previous evening the dog had made a mess in the house, and he had hit the dog so hard that he broke his arm. Because the dog had apparently not learned its lesson from the previous night's beating, Hilton was teaching the dog a better lesson. Hilton denied that he was using a baseball bat, but claimed instead to have used a three-and-a-half-foot rawhide chew stick. the police issued Hilton citations for disorderly conduct and cruely to animals.

Thus began the dispute between Hilton and everyone else on his block, a feud which continues to the present. Police have subsequently been called when a wheel came off a neighbor's car when she was driving because the

lug nuts had been removed; air had been let out of the tires of a neighbor's car; a "tow" sticker was removed from Hilton's automobile and placed on a neighbor's car; a neighbor threw a rock at a brick wall of Hilton's house; Hilton and his dog Rommel had cornered a neighbor in the neighbor's garage; Hilton's porch and door were "egged and ketchuped"; a piece of cheese was found on Hilton's porch after several of Hilton's neighbors were seen in his back yard; a neighbor asked Hilton "Are you going to beat this dog too?"; a note with the drawing of a graveyard was left on a neighbor's vehicle; and a neighbor's child allegedly made a face at Hilton. There were many other similar complaints made and investigated. Hilton was arrested after certain incidents, but no neighbor has ever been been arrested on Hilton's complaint.

LEGAL STANDARD

Summary judgment is appropriate if the pleadings, answers to interrogatories, admissions, affidavits and other materials show that "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(b). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). The party seeking summary judgment carries the initial burden of showing that no such issue material fact exists. Pursuant to rule 56(b), when a properly supported motion for summary judgment is made, the adverse party must set forth specific facts showing that there is a genuine issue of material fact and that the moving party is not entitled to judgment as a

matter of law. See Anderson, 477 U.S. at 250.

In making our determination, we are to draw inferences from the record in the light most favorable to the non-moving party. we are not required to draw every conceivable inference, but only those that are reasonable. See DeValk Lincoln Mercury, Inc. v. Ford Motor Co., 811 F.2d 326, 329 (7th Cir. 1987). The nonmovant may not rest upon mere allegations in the pleadings or upon conclusory statements in affidavits; rather, the party must go beyond the pleadings and support his contentions with proper documentary evidence. See Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S.Ct 2548, 2553, 91 L.Ed.2d 265 (1986). Rule 56 mandates the entry of summary judgment against a party who fails to establish the existence of an element essential to that party's cause of action. See Celotex, 477 U.S. at 422. With these principles in mind, we turn to the defendants' motion for summary judgment.

DISCUSSION

Hilton's complaint seeks recovery from defendants under 42 U.S.C. § 1983 for the denial of access to the courts. According to Hilton, the police officers' conduct "impeded or supressed his ability to vindicate himself in the courts." Hilton's Opposition Memorandum at 2. The Supreme Court has noted that "[t]he right to sue and defend in the courts is the alternative of force. In an organizes society it is the right conservative of all other rights, and lies at the foundation of orderly government." Ryland, 708 F.2d at 971 (quoting Chambers v. Baltimore & Ohio Railroad, 207 U.S. 142 (1907)). There is no question that "efforts by state actors to impede an individual's access to courts or to administrative agencies may provide the basis for a constitutional claim under

42 U.S.C. § 1983. Judicial access must be adequate, effective, and meaningful." Harrell, 169 F.3d at 432 (quoting Vasquez v. Hernandez,60 F.3d 325 (7th Cir. 1995)).

Hilton thus attempts to analogize his situation to one in which the police purposely lost evidence that could have been used by the plaintiff in a private civil suit, see Harrell v. Cook, 169 F.3d 428 (7th Cir. 1999), one in which state prosecutors covered up the murder of a young woman by calling it a suicide when they knew a local prosecutor had committed the murder, when such evidence would have been used in a tort action against the murderer, see Ryland v. Shapiro, 708 F. 2d 967 (5th Cir. 1983), and one in which police fatally shot a victim and concealed facts relating to the killing, when such facts would have been used in a civil suit, see Bell v. Milwaukee, 746 F.2d 1205 7th Cir. 1984).

The cases cited by Hilton relating to court access all involve hindering or preventing, to some large extent, an individual's ability to bring a civil suit. Not even all hinderances create an actionable constitutional violation. see Vasquez, 60 F.3d at 328-29. Hilton has not argued that his ability to sue his neighbors has suffered because of the Village police's actions. even if he had so argued, Hilton has produced no evidence in support.

Rather, Hilton argues that as a "victim of a crime" he has an "affirmative constitutional right to vindication in the courts," which to Hilton means having the perpetrators prosecuted. Hilton's Opposition Memorandum at 2. This argument has been rejected by the Supreme Court, which has stated that "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." S. v. D., 410 U.S. 614, 619 (1973). Hilton thus cannot maintain a

§ 1983 action based on a denial of his access to courts on the theory that his neighbors should have been prosecuted.

Therefore, we grant summary judgment for the defendants.

CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment is GRANTED, and Hilton's suit is DISMISSED.

Charles P. Kocoras
United States District Judge

Dated: August 12, 1999

APPENDIX B

In the
United States Court of Appeals
For the Seventh Circuit

No. 99-3727

EYRLE S. HILTON, IV

Plaintiff-Appellant,

v.

CITY OF WHEELING, *et al.*,

Defendants-Appellees.

Appeal from the United State District Court
for the Northern District of Illinois, Eastern Division
No. 99 C 860—Charles P. Kocoras, *Judge.*

ARGUED MARCH 27, 2000—DECIDED APRIL 20, 2000

Before POSNER *Chief Judge,* and FLAUM and WILLIAMS, *Circuit Judges.*

POSNER, *Chief Judge.* Eyrle Stuart Hilton, IV sues the Village of Wheeling (a Chicago suburb) and members of its police force (plus two social workers employed by the Village) for injunctive relief and damages, alleging violation of his constitutional rights to petition the government for redress of grievances and to enjoy the equal protection of the laws. 42 U.S.C. § 1983. The district

court granted Summary Judgement for the defendants.

For the last seven years Hilton and his neighbors in an apartment complex in a blue-collar district of Wheeling have been locked in a feud that began when Hilton was seen beating a Rottweiler puppy (appropriately named "Rommel") with what a neighbor who called the police described a baseball bat, though Hilton claims that it was merely a rawhide chew stick. When the police arrived he explained that he had broken his arm (Hilton's arm, not the dog's) beating Rommel the previous evening. Hilton was cited for cruelty to animals and fined $500. The subsequent history of Rommel is interesting, though perhaps not strictly germane. Hilton tired of Rommel, took him to a veterinarian, and told the veterinarian to kill the dog. The vet refused, saying that the dog was healthy (Hilton's savage beatings had failed to injure Rommel) and that he wanted to put him up for adoption. Hilton agreed, but later decided he wanted Rommel back, and when he could not get him back protested at an open hearing of the Wheeling village council, dragging the empty leash behind him to punctuate his plea.

Since the initial *contretemps* with his neighbors over Rommel, Hilton has been cited or arrested some fifteen times by the Wheeling police on neighbors' complaints for such transgressions as disorderly conduct, battery, and violating noise ordinances by yelling or by playing his stereo too loud. Hilton does not deny that there was probable cause for each of these arrests or citations. His argument rather is that the police have not been even-handed in arbitrating, as it were, his feud with his neighbors. He has complained to the police about them

many times. One neighbor, he complained, had kicked and broken his door. Another had thrown a rock at his house. Others had loud noise. One called him an "idiot" in front of a police officer, which he describes as "verbal harassment." And so on. The police responded to all these complaints—they have responded some eighty times over the past seven years to complaints arising out of the feud. But only once have they taken any action against a neighbor complained of by Hilton. That was when he complained to them that a neighbor's dog was barking loudly—and the police cited *him* for disorderly conduct as well as the neighbor. They have enforced the law one-sidedly.

The right to petition the government for redress of grievances is found in the First Amendment to the Constitution but has been held to be enforceable against the states by virtue of the due process clause of the Fourteenth Amendment. *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963); *Grossbaum v. Indianapolis-Marion County Building Authority*, 100 F.3d 1287, 1294 n. 5 (7th Cir. 1996). The right (on which see *McDonald v. Smith*, 472 U.S. 479, 482-85 (1985)) has never been understood to be a right to police assistance, or for that matter to any governmental assistance, services, or largesse. As the Supreme Court held in *DeShaney v. Winnebego County Dept. of Social Services*, 489 U.S. 189, 195-97 (1989), and we have repeated many times, the Constitution, insofar as it creates or protects liberties, is (with immaterial exceptions) a charter of *negative* liberties. *River Park, Inc. v. City of Highland Park*, 23 F.3d 164, 166 (7th Cir. 1994); *K.H. Through Murphy v. Morgan*, 914 F.2d 846, 848-49

(7th Cir. 1990); *Jackson v. City of Joliet*, 715 F.2d 1200, 1203-04 (7th Cir. 1983); *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982); *Pinder v. Johnson*, 54 F.3d 1169,1174 (4th Cir. 1995) (en banc); *Alston v. Redman*, 34 F.3d 1237, 1247 (3d Cir. 1994); David P. Currie, "Positive and Negative Constitutional Rights," 53 *U. Chi. L. Rev.* 864 (1986). It creates areas in which the government has to let people alone; it does not entitle them to demand services, such as police protection.

The reasons are historical, *Jackson v. City of Joliet, supra,* 715 F.2d at 1203, but also practical: it is not a feasible undertaking for the federal courts to direct the allocation of public resources to particular public services. So while the government may not interfere with the right to petition, *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *Harrell v. Cook*, 169 F.3d 428, 432 (7th Cir. 1999); *Vasquez v. Hernandez*, 60 F.3d 325, 328 (7th Cir. 1995), it need not grant the petition, no matter how meritorious it is. Cf. *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973). Nor, by the way, does the right to petition for redress of grievances imply a duty of the government to make every government employee a petition receiver. Although we cannot find a case on the point (there are few cases construing the right-to-petition clause), we think it plain that the right is merely a right to petition the appropriate governmental entity, in this case the local prosecutor rather than the police on the beat. We point this out to remind Mr. Hilton that he may have other avenues of redress.

A complaint of unequal police protection in violation of the equal protection clause is less easily disposed of.

On the one hand, the clause, concerned as it is with equal treatment rather than with establishing entitlements to some minimum of government services, does not entitle a person to adequate, or indeed to any police protection. On the other hand, selective withdrawal of police protection, as when the Southern states during the Reconstruction era refused to give police protection to their black citizens, is the prototypical denial of equal protection. *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 70 (1873); David P. Currie, *The Constitution in the Supreme Court: The First Hundred Years* 349 (1985). Hilton, and so far as appears his neighbors, are all white; there is no suggestion that he is being discriminated against because of his race, religion, gender, or some other attribute that defines a group traditionally protected by the equal protection clause. But now that the Supreme Court has affirmed our decision in *Olech v. Village of Willowbrook*, 160 F.3d 386 (7th Cir. 1998), aff'd, 120 S. Ct. 1073 (2000) (per curiam), we know that a person does not have to be a member of a protected group to invoke the clause. If the police decide to withdraw all protection from Hilton out of sheer malice, or because they had been bribed by his neighbors, he would state a claim under *Olech*. See also *Esmail v. Macrane*, 53 F.3d 176 (7th Cir. 1995), and other cases cited at 160 F.3d 387; *Forseth v. Village of Sussex*, 199 F.3d 363, 371 (7th Cir. 2000); *Levenstein v. Salafsky*, 164 F.3d 345, 352 8th cir. 1998); cf Friedrich Duerrenmatt, *The Visit*. But there is no suggestion of this. For reasons that Hilton has not attempted to discover, the police exercised the broad discretion that custom gives them in enforcing minor

public nuisance laws, in favor of the neighbors. For all we know, they did so simply because the neighbors were always in the right and Hilton was always in the wrong. But maybe not; maybe the Wheeling police are inept, or have been deceived by the neighbors. It doesn't matter; what matters is the absence of evidence of an improper motive.

The role of motive is left unclear by the Supreme Court's decision. On the one hand the court recited the standard formula that the equal protection clause forbids intentional differences in treatment for which there is no rational basis. On the other hand it said that the claim that the difference in treatment was "irrational *and wholly arbitrary*" (emphasis added) was sufficient that the Court was not reaching our "alternative theory of "subjective ill will.' "120 S. ct. at 1075. If a merely unexplained difference in police treatment of similar complaints made by different people established a prima facie case of denial of equal protection of the laws, the federal courts would be drawn deep into the local enforcement of petty state and local laws. Repeating what we said in our opinion in *Olech*, and Justice Breyer in his concurring opinion in the in the Supreme Court, 120 S. Ct. at 1075, we gloss "no rational basis" in the usual setting of "class of one" equal protection cases to mean that to make out a prima facie case the plaintiff must present evidence that the defendant deliberately sought to deprive him of the equal protection of the laws for reasons of a personal nature unrelated to the duties of the defendant's position. We described the class of equal protection cases illustrated by *Olech* as "vindicative action" cases and said that they

require "proof that the cause of the differential treatment of which the plaintiff complains was a totally illigitimate animus toward the plaintiff by the defendant." 160 F.3d at 388. No evidence of such an animus was presented in this case.

Amplifying our earlier point about other remedies, we note that if the neighbors have committed torts against Hilton, he has civil remedies under state law. He has no remedy under the U.S. Constitution.

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit